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Montana Legislative Council

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THE INTERIM

AUGUST 1994 HELENA, MONTANA VOL. IX NO. 15

COMMITTEE ON INDIAN AFFAIRS

To Meet at Fort Belknap...The Committee on Indian Affairs will meet on the Fort Belknap Indian Reservation on Thursday and Friday, August 4 and 5. The Committee will tour the reservation on Thursday afternoon and Friday morning and will then hold a meeting on Friday afternoon at the Tribal Center. The Committee will also meet with the Fort Belknap Community Council and other tribal officials during the visit.

This is the Committee's first trip to a reservation in several years. The Committee hopes to visit other reservations in Montana in succeeding interims.

SUBCOMMITTEE ON INSURANCE ISSUES

Subcommittee to Meet in August...The Subcommittee on Insurance Issues will hold its final meeting on Friday, August 26 in Room 104 of the Capitol, beginning at 9:30 a.m. At that time the Subcommittee will make its final recommendations regarding legislation for the 1995 Session. The Subcommittee will also tour the Capitol to view the damage to the building that needs to be repaired.

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STATE HOUSING TASK FORCE

Housing Task Force Hears from Wyoming Agency...The State Housing Task Force met on Monday, July 18 in Room C-209 of the Cogswell Building. George Axlund, Executive Director of the Wyoming Community Development Authority (WCDA), addressed the Task Force.

The WCDA is the housing finance agency for the state of Wyoming. It administers not only state housing programs but federal housing programs as well: HOME, Section 8, and Community Development Block Grant (CDBG). In addition, the WCDA operates a public housing program in Laramie. The WCDA is a quasi-governmental entity that receives no state money and is governed by a governor-appointed board that has the authority to hire staff and approve the budget.

The WCDA administers a housing trust fund of \$10 million to meet special needs that cannot be addressed by other programs. The trust fund provides loans for leverage and gap financing and also offers grants to local governments to help with the required match for the HOME program.

Mr. Axlund pointed out that the advantages of a single housing agency outside the purview of state government are flexibility and accountability. For example, the WCDA Board saw a need for a housing trust fund and created one without having to seek legislative approval. While the WCDA has been unable to develop a single application form for both state and federal programs, it has aligned its funding cycles to make it easier for applicants seeking funding from more than one source.

Mr. Axlund concluded by saying that the key to the success of any housing finance agency is the ability to serve people and to get housing built.

Task Force Formulates Recommendations...The Task Force spent the remainder of the meeting discussing the recommendations it will make to the governor and the Legislature. The recommendations are as follows:

- that Governor Racicot issue an executive order extending the life of the State Housing Task Force for another two years so that it may continue seeking solutions to the housing affordability crisis in Montana; and
- that the governor and the Legislature designate the Montana Board of Housing (MBH) as a quasi-governmental housing finance agency, encompassing current MBH programs, HOME, Section 8, CDBG (housing only), Housing Community Development Plan (formerly known as CHAS), and a housing trust fund.

To Meet with Governor...The Task Force hopes to meet with Governor Racicot in September to discuss its recommendations with him. The Task Force will issue its final report in early October.

JUDICIAL UNIFICATION AND FINANCE COMMISSION

Commission Holds Public Hearing...Preparing to wrap up its study, the Judicial Unification and Finance Commission (JUFC) held a public hearing on its preliminary recommendations on July 13.

The Supreme Court supported the JUFC's recommendation to retain a seven-member Supreme Court. The Court also expressed some concern about whether the justices would have time to support the meetings proposed by the JUFC as part of its recommendation for a Judicial Council and regional conferences.

Court reporters opposed the JUFC's recommendation that they become state employees, and that their fees be replaced by a program to reimburse them for the actual cost of preparing transcripts. The primary objection was not to becoming state employees, but to losing transcript fees.

Public defenders from Yellowstone County and Missoula County acknowledged that counties may need help to fund full-time public defender offices, but strongly opposed becoming state employees. The public defenders believed that they should remain county employees paid by the county commissioners, despite arguments that there could be a potential conflict of interest for the commissioners if a public defender aggressively pursued defenses that would cost the county more money.

Juvenile probation officers also opposed becoming state employees and argued against the notion that there could be a conflict of interest for judges who appoint the juvenile probation officer who then must argue a case before the judge. The judge may be reluctant to rule against an employee, or, at the very least, the family of a youth whom the judge rules against in favor of a probation officer may perceive a conflict of interest.

The Montana Association of Counties and the League of Cities and Towns expressed concern over the loss of revenue that will result if, as the JUFC is recommending, the local option tax on light vehicles is reduced from 0.5% to 0.4%. However, both organizations acknowledged that a 0.1% mandatory tax for the state to assume certain district court costs was reasonable and fair. The organizations also acknowledged that removing the sunset on a provision that would allow counties and cities

to receive a portion of the 0.4% tax, as the JUFC is recommending, was better than losing all revenue if the sunset remains in effect.

Recommendations Rejected by Commission...Following the public hearing, the JUFC rejected state assumption of total funding responsibility for court reporters and public defenders. The JUFC also rejected making the clerk of district court a non-partisan office. This was based on testimony that the cost of running a campaign would be prohibitive if clerks of district court could not accept party donations.

Commission Proposes Cost-sharing Program...In lieu of the state's total assumption of court reporter and public defender costs, the JUFC is now considering a cost-sharing program with counties in which the state would provide a 50/50 match of county expenditures in certain areas related to indigent defense in civil and juvenile cases, court reporters, psychiatric evaluations in civil cases, and juvenile probation. This idea will be further discussed and developed at the JUFC's next meeting.

Recommendations Being Finalized...In the area of court administration, the JUFC still plans to recommend:

- providing for a Judicial Council composed of one representative each from the Supreme Court, district courts, courts of limited jurisdiction, and the clerks of district court. The Council would meet a few times each year, or as necessary, to provide for long-range strategic planning for the judiciary and would be an advisory body available to the Supreme Court on matters affecting the operation of state courts.
- providing for Judicial Administration Regions as a framework for having periodic regional conferences with judges and clerks in each region to share concerns and information. Each region would be presided over by a Supreme Court justice. There would also be a chief district judge and chief clerk of district court to assist with any coordinating activities.
- retaining a 7-member Supreme Court;
- amending sections 3-5-111 and 3-5-112, MCA, related to the assignment of district judges to other jurisdictions, by replacing "governor" with "chief justice" in keeping with the constitutional separation of powers;

In the area of court finance, the JUFC still plans to recommend:

- providing that expenses related to postconviction relief be considered a reimbursable expense under the current criminal reimbursement program;
- raising by \$10 certain district court fees on initial filings to provide funding for court automation, raising by \$20 fees for transferring files, and raising by \$100 the fee for a judicial substitution motion; and
- reducing the optional light vehicle tax from 0.5% to 0.4% but providing that counties may retain a portion of revenue generated from the tax and requiring that counties impose a 0.1% light vehicle tax for state funding for certain district court expenses.

To Meet Again in August...The JUFC's next meeting is tentatively scheduled for 9 a.m. Monday, August 22, in Room 325 of the State Capitol. The JUFC will use August and September to finalize its recommendations and its final report to the 54th Legislature.

For further information about the JUFC, contact Sheri S. Heffelfinger, Researcher, at the Montana Legislative Council, 444-3064.

SUBCOMMITTEE ON WORKERS' COMPENSATION ALTERNATIVES

Subcommittee to Discuss Independent Contractor Exemption...The Subcommittee on Workers' Compensation Alternatives has rescheduled its July 15 and 16 meeting for August 19 and 20. The topic for this meeting will be the independent contractor exemption for workers' compensation insurance and employee leasing firms and their relationship with workers' compensation.

A working group formed by Representative Vicki Cocchiarella to work on the independent contractor issue met on June 28 and prepared a summary document for the Subcommittee. The document identifies the problems the working group discussed and four options for the Subcommittee's consideration.

SUBCOMMITTEE ON VETERANS' NEEDS

Subcommittee Considers Recommendations...The Subcommittee on Veterans' Needs met on June 30 and considered items for recommendation. The Subcommittee approved and sent a letter to the Montana Health Care Authority asking the Authority members to include veterans in the long-term care study mandated by Senate Bill 285 and asking that the Authority address the overall health care needs of veterans in its deliberations.

The Subcommittee has also requested that staff refine draft legislation for consideration at their final meeting on September 9. The drafts include:

- raising the allowance for raising and shipping of the headstones provided by Congress to \$70, with the \$40 increase funded by the state;
- requesting that veterans be included as a variable in any future housing studies by the Department of Commerce and that the Board of Housing use its existing authority to develop special programs for housing developments for veterans in Montana; and
- providing an honorary cash benefit for veterans of military action in Desert Storm, Desert Shield, Panama, Lebanon, and Grenada.

The Subcommittee will also consider a resolution that addresses the concerns of the Legacy Legislature and the Veterans of Foreign Wars.

To Meet in September...The Subcommittee will hold its final meeting on Friday, September 9 in Room 108, beginning at 9:30 a.m.

COMMITTEE ON CHILDREN AND FAMILIES

Committee to Meet in August...The fifth meeting of the Committee on Children and Families is scheduled for Friday, August 12 at 9 a.m. in Room 108 of the State Capitol. The tentative agenda will include the following: update on the work on state prevention planning by the Interagency Coordinating Council (ICC); a review of the establishment of Managed Resources Montana, a partnership project to address the service needs of emotionally disturbed children; and a staff review and Committee

discussion of each information request and tentative recommendation from the June 24 meeting.

Committee to Review Recommendations...The tentative recommendations from the June 24 include the following:

- further investigation into ways to enhance or to combine the various local interagency teams that exist for information sharing, for placement of children, or for foster care review;
- continued tracking of the ICC state prevention plan;
- drafting legislation to reauthorize the Joint Oversight Committee on Children and Families;
- drafting legislation to add the Commissioner of Labor and Industry as a member of the ICC; and
- further investigation into methods of assuring adequate checks and balances in state policies on child and adult protective services.

The Committee will also be developing language for the final report that compliments and encourages the following state agency initiatives: family preservation programs for families at risk of losing or abusing their children; building community family support networks; early intervention services and home visiting programs that encourage healthy family development, maternal and child health, and parenting skills.

WATER POLICY COMMITTEE

Next Meeting Scheduled for August...The next Water Policy Committee meeting is scheduled for Thursday and Friday, August 18 and 19. The August 18 meeting will be in Room 104 of the State Capitol and will focus on the Late Claims Study. Thursday evening and Friday the Committee will continue its look at instream flow issues in the Big Hole River Basin.

Late Claims Study Continues...At its May meeting, the Committee requested a brief review of the testimony received to date regarding the Late Claims Study as well as a memo reviewing options for study completion. The Committee is expected to make preliminary recommendations regarding the Late Claims Study at the August meeting to ensure an adequate opportunity for public involvement. Those

interested individuals not on the Late Claims mailing list who would like a copy of the options memo should contact Committee staff.

Committee to Travel to Big Hole to Discuss Instream Flow... Thursday evening, August 18, the Committee will again travel to the Big Hole River Basin for a public meeting regarding instream issues. The meeting will start at 7:00 p.m., in the Twin Bridges Grade School cafeteria at 216, West 6th. St, Twin Bridges.

The Committee will then complete its tour of the lower Big Hole River Basin on Friday, August 19. The Committee was invited back to the Basin at its April meeting in Divide. The Committee's intent is to provide a forum for the continued discussion of this important issue and to foster the opportunity for local responses to dewatering problems.

Committee to Look at Other Issues... The Committee will also review a workplan update memo to identify those issues that require additional attention this interim.

For more information on these issues, please contact the EQC staff at 444-3742.

ENVIRONMENTAL QUALITY COUNCIL

August Meeting Postponed... The August meeting of the Environmental Quality Council has been postponed until the third week of September. The Council is planning on holding a joint meeting with the Legislative Auditor's Committee to review the DHES Water Quality Bureau and DSL Hard Rock Bureau audit reports. Details of this meeting will be published in the September *Interim*.

For more information on these issues, please contact the EQC staff at 444-3742.

LEGISLATIVE FINANCE COMMITTEE

Committee to Meet on September 8 and 9...The Legislative Finance Committee (LFC) will meet on September 8 and 9 in Room 104 of the State Capitol. Reports to be presented by the staff of the Legislative Fiscal Analyst will include:

- proposed budget amendments;
- status of the highways state special revenue account;
- contracted services/FTE in DHES;
- implementation of House Bill 7 (revised budget process for the 1997 biennium);
- a corrections system study;
- the fiscal 1994 general fund/SEA year end fund balances;
- fiscal impact of the federal retiree negotiated settlement; and
- a status report on the fiscal impact of SB 32 (30% general fund reversion).

In addition, there will be reports and recommendations from two LFC subcommittees: 1) the SB 378 study of earmarked revenues and statutory appropriations; and 2) the study of the realignment of appropriations subcommittees. Other reports by agency representatives will include: 1) the current management practices at corrections institutions; and, 2) an update on Medicaid reporting requirements of House Bills 33 and 34 from the 1993 Special Session, including Medicaid cost estimates for the 1997 biennium and managed care contract negotiations.

Senate Bill 378 Subcommittee to Meet...Senate Bill 378 directs the LFC to review all state special revenue fund accounts to ensure they are based on sound principles of revenue dedication, reflect legislative priorities for state spending, and are terminated when no longer needed. The LFC is also directed to review all statutory appropriations to determine if the appropriation should be made by a legislative appropriation.

The LFC Senate Bill 378 Subcommittee will meet July 29 at 9 a.m. in Room 108 of the Capitol to determine its recommendations to the LFC. The Subcommittee will focus on:

- categories of accounts to exempt from future SB 378 review;
- a review of specific accounts that may not meet the criteria for earmarking;
- categories for draft legislation to implement LFC's recommendations;

- clean-up legislation on the gasoline dealers' license tax, lodging facility use tax, coal severance tax, and permanent coal tax trust interest deposits to the SEA;
- de-earmarking SEA revenue sources;
- accounts that commingle constitutionally mandated revenue with other revenue;
- de-earmarking general revenue sources such as taxes, fines and forfeitures, interest, and investment earnings;
- amending Senate Bill 378 legislation; and
- review of statutory appropriations that may not meet the Subcommittee criteria for designation as a statutory appropriation.

The Subcommittee's recommendation will be presented to the LFC at the September 8-9 meeting.

THE BACK PAGE

With encouragement from the Legislative Council, the staff of the Legislative Council's Research and Reference Division (hereafter, Staff) identified concerns related to the interim study process and suggested, for Council consideration, options for addressing those concerns. This month's "The Back Page" is a summary of issues relevant to the interim study process, and includes a brief discussion of the issues and the Staff's ideas of alternative approaches to addressing the issues.

The Staff's review and presentation are certainly not exhaustive, but were presented to provoke a robust and healthy discussion of the process and alternatives to the status quo. While recognizing that the prerogatives are clearly within the domain of legislators, the Staff nevertheless responded openly and sincerely to the Council's challenge to propose improvements to the interim study process.

ASSESSING THE INTERIM STUDY PROCESS: PROSPECTS FOR IMPROVEMENT

By Dave Bohyer

RECOMMENDATION: REFORM THE PROCESS OF SETTING INTERIM STUDY PRIORITIES AND INVOLVE THE LEGISLATIVE LEADERSHIP

The Staff submits that the Leadership may have minimized their role in ensuring that the needs and priorities of the entire Legislature are recognized and addressed in setting the course of work for the interim. Further, as the opportunity for legislators' study requests to be executed has decreased, measures have been taken to ensure that an issue will be addressed, i.e., directing permanent committees to conduct studies or establishing study committees through bills rather than resolutions. Additionally, the value assigned to the interim study poll of legislators in setting interim study priorities has become so enhanced of late that the poll results are nearly compelling, rather than instructive, in setting priorities and work assignments.

After due consideration, the Staff believes that the following policies warrant consideration:

- Institute a tradition of the Council working collaboratively with the Leadership in setting study priorities.

- In consideration of how priorities might be set, three things should be deliberated: (1) consider the results of the poll only as indicators of priority, not as compelling or absolute; (2) establish a "weighting" strategy that would more accurately ascertain the results (i.e., the relative importance) of the poll on interim study requests; and (3) develop criteria for the Council and the Leadership to use as guidelines in determining the relative and overall importance of interim study requests and other (study) opportunities.
- Ensure that the scope of study possibilities is as broad as possible before the Council and the Leadership commence setting priorities.

RECOMMENDATION: IMPROVE WAYS TO DEVELOP AND SELECT INTERIM STUDIES

The Staff has observed that interim study requests are considered for a variety of reasons. Some requests are adopted for pragmatic and utilitarian reasons, while others may be adopted for less virtuous reasons. Many of the underlying forces that come to bear in the waning days of a session can result in a hastily conceived study request (or requirement) that is equally hastily considered and disposed of. Hence, prudence sometimes gives way to expediency.

The Staff believes that the following policies warrant consideration:

- Establish request, introduction, and transmittal deadlines for legislation containing interim study requests.
- Attach fiscal notes to each joint resolution requesting an interim study.
- Institute a policy that the sponsor of an interim study must present the study idea to the Council and the Leadership as they commence their consideration of interim priorities.
- Discourage (or preclude) the assignment of an interim study to a permanent committee of the Legislature: LFC, Audit, ROC, Indian Affairs, etc.
- Discourage (or preclude) the assignment of an interim study by bill. If a study bill is passed and approved, the Council, working with the Leadership, should be able to consider the legislation as a request rather than as an obligation.

- Return to the statutorily intimated notion of "subcommittees", which will require the Council to designate the standing committees from which the study committee members may be selected.
- Consider allowing the standing committees to select their own topics for interim study and to continue meeting during the interim to execute the inquiry.

RECOMMENDATION: ENHANCE THE INTERIM STUDY PROCESS

In recent years, the appointment of members to interim study committees has been completed later and later in the interim. In addition, the sponsor of an interim study request is often not appointed to the study committee. Further, if the study sponsor is not appointed to the study, the committee stands to lose a potentially spirited and interested force among its membership. Finally, study committee members are sometimes unable or choose not to participate fully in the study. All of this can result in diminished commitment during the study or a lack of continuity following its conclusion.

The Staff believes that the following policies warrant consideration:

- Initiate a policy that interim study committee appointments must be completed by June 15 following adjournment of the regular session.
- Require direct involvement of the study sponsor on the committee.
- Take steps to ensure participation of study committee members, e.g., after two absences, resignation is assumed.
- Take steps to ensure continuity and commitment of study committee members, e.g., in appointing committee members, adhere more closely to the tenets expressed in Mason's Manual of Legislative Procedures.

RECOMMENDATION: ENHANCE THE FLEXIBILITY OF THE COUNCIL AND ITS MANAGEMENT TO ALLOCATE RESOURCES

In the past 10 to 12 years, appropriations for interim studies have been significantly reduced. The effects have been widespread, and few, if any, of the effects have improved the process. Additionally, statutory language and some internal policies limit flexibility in managing staff and financial

resources. These limitations include but are certainly not limited to committee makeup and "creative funding" schemes.

The Staff believes that the following policies warrant consideration:

- Restore funding to historic levels.
- Avoid the use of special revenue for interim studies.
- Enhance the flexibility of the Council and its managers to allocate/assign resources, including staff; duration of study; legislator involvement; committee/staff training; etc.

RECOMMENDATION: MODIFY THE TRADITIONAL APPROACH TO CONDUCTING INTERIM STUDIES

Most study committees follow a similar pattern: background and research phase, discussion phase, option identification phase, and recommendation phase. The traditional approach might be improved upon. The Staff offers the following ideas for further consideration:

- At the earliest stages of an interim study, the committee should focus its concerns and define its strategy.
- The principle of interim "study" should be reinforced, and the tendency toward "recommendation" should be dissuaded.
- If a study committee reaches agreement that a recommendation should be made in bill form, the recommendation should be approved by a minimum of six committee members.
- The media should be apprised on an intermittent basis of committee activities and of information gathered during the course of the study.
- Orientation for legislators, veterans and novices alike, should be expanded to include an explanation of recently concluded interim studies and to preview issues that might be considered for study during the ensuing interim.

SUMMARY AND CONCLUSION

A variety of options exists for changing and improving the interim study process. This overview has identified and discussed several of the options that the Staff believes deserves broader consideration, and the Legislative Council has agreed. If you have comments on these ideas or if you have ideas of your own, please contact Bob Person or Dave Bohyer at 444-3064 or a member of the Legislative Council.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL.

AUGUST

August 4 and 5, Committee on Indian Affairs, Fort Belknap
Reservation

August 12, Committee on Children and Families, Room 108, 9 a.m.

August 18, Water Policy Committee, Room 104, 8 a.m. and Twin
Bridges Grade School, 7 p.m.

August 19, Water Policy Committee, Big Hole River Basin

August 19, Subcommittee on Workers' Compensation Alternatives,
Room 437, 8 a.m.

August 20, Subcommittee on Workers' Compensation Alternatives (at
the call of the chair)

August 22, Judicial Unification and Finance Commission, Room 325,
9 a.m.

August 24, Legislative Council, Room 108, 9 a.m.

August 26, Subcommittee on Insurance Issues, Room 104, 9:30 a.m.

SEPTEMBER

September 5, Labor Day, holiday

September 8 and 9, Legislative Finance Committee, Room 104

September 9, Subcommittee on Veterans' Needs, Room 108, 9:30
a.m.

September 15, ALL INTERIM STUDY WORK COMPLETED

September 23, Revenue Oversight Committee, Room 104

September 30, Committee on Postsecondary Education Policy and
BudGET

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